



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

MND MNR MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord on March 9, 2015, to obtain an Orders of Possession for unpaid rent and for cause; and to obtain a Monetary Order for: damage to the unit, site or property; unpaid rent or utilities; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenant for this application.

The hearing was conducted via teleconference and was attended by the Landlord, her Agent, and the Landlord's witness. No one attended the hearing on behalf of the Tenant.

The Landlord testified that on approximately March 10, 2015, she personally served the Tenant with copies of her application for Dispute Resolution, the hearing documents, and her evidence, in the presence of her Agent. The Agent testified that he witnessed the Landlord hand the Tenant the documents while at the Tenant's son's home. Based on the submissions of the Landlord and her Agent, I find the Tenant was sufficiently served notice of this proceeding, and I continued in the Tenant's absence.

### Issue(s) to be Decided

Has the Landlord proven entitlement to monetary compensation under the Residential Tenancy Act (the Act)?

### Background and Evidence

The Landlord submitted evidence that the Tenant entered into a written month to month tenancy agreement that began on November 1, 2014. Rent of \$600.00 was due on or before the first of each month and on November 1, 2014 the Tenants paid \$300.00 as the security deposit. The parties attended a move in condition inspection and signed the condition report on November 1, 2014. A mid-tenancy inspection report was completed on November 28, 2014, at which time the Tenant signed the condition report agreeing to repair the damages that had been caused to the rental unit.

The Landlord testified that when the damages were not being repairs she served the Tenant a 1 Month Notice to end tenancy for cause on December 28, 2014. Then on December 30, 2014 another inspection was conducted during which the Tenant told the Landlord she would not take responsibility for the damages, she would not be paying January 2015 rent, and she would be vacating the unit as soon as possible.

The Landlord stated that no rent was paid for January 1, 2015 so on January 2, 2015 the Landlord served the Tenant a 10 Day Notice for unpaid rent. The Landlord submitted that she lived on the same street as the rental unit and that she saw the Tenant moving her possessions out on January 12, 2015. The Landlord attended the rental unit at 9:30 p.m. that evening at which time the Tenant returned the keys and refused to conduct the move out inspection. The Landlord said she regained possession of the rental unit the evening of January 12, 2015, and found that the rental unit had been left damaged and unclean. As such, the Landlord withdrew her requests for Orders of Possession.

The Landlord now seeks compensation in the amount of \$2,712.27 which is comprised of the following:

\$600.00	Unpaid January 2015 Rent as the tenancy ended due to the Tenant's failure to pay rent and make repairs
\$835.00	Labor costs to repair and clean the interior and exterior of the rental property
\$75.81	Meals and vehicle gas for Landlord during the repair period
\$1,201.46	Materials, supplies, and contractor invoices to conduct repairs this amount was \$1,326.46 and was reduced by \$125.00 to compensation for the depreciated value of the front door that had to be replaced, as per the agreement between the Landlord and Tenant

In support of the claim, the Landlord submitted documentary evidence which consisted of, among other things, copies of: the tenancy agreement; three completed reports for condition inspections conducted on November 1, 2014, November 28, 2014, and December 30, 2014; 10 Day Notice; 1 Month Notice; a written chronological list of events/ diary; a worksheet listing all receipts and amounts being claimed; and the actual receipts for items being claimed.

### Analysis

Given the evidence before me, in the absence of any evidence from the Tenant who did not appear despite being properly served with notice of this proceeding, I accept the undisputed version of events as discussed by the Landlord and corroborated by their evidence.

**Section 7** of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

### **7. Liability for not complying with this Act or a tenancy agreement**

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenant is deemed to have received the 10 Day Notice on January 5, 2015, three days after it was posted to the door, and the effective date of the Notice was **January 15, 2015**. The Tenant did not pay the rent and vacated the property on January 12, 2015.

Section 26 of the Act stipulates that a tenant must pay rent in accordance with the tenancy agreement; despite any disagreements the tenant may have with their landlord.

The evidence supports that the Tenant breached section 26 of the Act by failing to pay her rent that was due on January 1, 2015. Accordingly, I grant the Landlords' application for unpaid rent of **\$600.00**.

Section 21 of the Regulations provides that In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Section 32 (3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear; and must return all keys to the Landlord.

Based on the undisputed evidence before me, I find the Tenant breached sections 32(3) and 37(2) of the Act, leaving the rental unit unclean and damaged at the end of the tenancy. As per the foregoing I find the Landlord has met the burden of proof and I award costs for repairs, which included \$835.00 labor plus \$1,201.46 for materials, supplies, and contractor invoices for a total amount of **\$2,036.46**.

In regards to meals and fuel costs for travel of \$75.81 that was claimed, I find that the Landlord has chosen to incur those costs which cannot be assumed by the Tenant. The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of *Act* and not a landlord's cost of doing business Accordingly, I dismiss the claim for \$75.81, without leave to reapply, as those costs are not denominated, or named, by the *Residential Tenancy Act*.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the Act.

**Monetary Order** – I find that the Landlords are entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Unpaid Rent January 2015	\$ 600.00
Labor, repairs, materials	2,036.46
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	\$2,686.46
<b>LESS:</b> Security Deposit \$300.00 + Interest 0.00	<u>-300.00</u>
<b>Offset amount due to the Landlords</b>	<b><u>\$2,386.46</u></b>

Conclusion

The Landlord withdrew her request for Orders of Possession.

The Landlord has been awarded a Monetary Order for **\$2,386.46**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 10, 2015

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Residential Tenancy Branch

